Thank you for providing this opportunity to comment on the Revised Industrial Stormwater General Permit ("the Draft Permit"). The Port of Seattle has a compelling interest in the issuance of a Permit that is both protective of the environment and that is possible to comply with. Three Port of Seattle operations are currently covered under the existing Permit: the Maintenance operation, located in the Lower Duwamish industrial area; Terminal 37 on Elliott Bay; and the Marine Industrial Center on the Ship Canal. In addition, we have fourteen tenants who are covered under the existing Permit. The Port is co-permittee on most of these tenant permits. These permitted properties represent approximately 80-85% of the acreage for all the Port's Seaport properties. Thus, the language of this Draft Permit will have a significant effect on us.

This letter is organized in two sections: an introductory section with general comments, and a longer, more detailed section that goes through specific comments concerning the Draft Permit language itself.

GENERAL COMMENTS

Although most of our specific comments are critical of the Draft Permit, we wanted at the outset to remark favorably on certain aspects of this permit that make a lot of sense to us.

- We appreciate the Permit's continued affirmation of the important concept that all stormwater dischargers should utilize a common technical document (the Stormwater Management Manual) that takes an adaptive, BMP-based approach to stormwater management. Similarly, we welcome the Permit's continued emphasis on the importance of Stormwater Pollution Prevention Plans (SWPPPs) as the key management tool in implementing these BMPs. We believe these elements provide the only realistic path to address stormwater problems at industrial facilities.

- We commend Ecology on your decision not to include temperature and fecal coliform as compliance requirements in the permit. There are just too many unresolved technical, regulatory, administrative and operational problems with managing these pollutants in stormwater to set either a benchmark or an effluent limit.
- The agency's move towards adopting EPA's concept of benchmarks is, we believe, a positive step to break the monitoring logjam.
- We were pleased to see the clear statement in S2A that although a property owner may chose to be a co-permittee, it is the operator of the industrial facility who is the permittee. This clarification will help us in working with our tenants.

- The design storm exemption in S7(C) is an absolute necessity, given the dramatic variability in our weather patterns and the need to have achievable engineering standards in the Manual

Another general comment that concerns not the Draft Permit, but certain statements made in a section of the Fact sheet entitled "Permit Status and Summary of Compliance with the Previous Permit." (page 15-16). The Fact sheet states that only about 25% of the facilities inspected would be considered in "full compliance" with permit BMP requirements. As an initial matter, the Port takes great pride in the amount of time; money and effort we put into making sure that our facilities and our tenants' facilities are in compliance with BMPs. However, we recognize that our commitment is not typical, and indeed can understand why many facilities have found compliance to be an extremely challenging task. The constantly shifting state and local regulatory requirements, the cost and space constraints that limit existing facilities' ability to upgrade to new engineering standards, and the general lack of understanding of stormwater requirements in the labor force are real problems that must be dealt with every day. There are parts of this Draft Permit that imply that Ecology thinks the way to achieve 100% compliance is to just mandate it, and set up dire consequences. However, lessons learned from other Ecology programs (*e.g.* Hazardous Waste and Toxics Reduction) reveal that it is common to find very low levels of compliance when the agency tries to impose complex technical regulations and lots of paperwork on small enterprises. Most businesses are out of compliance due to ignorance, not to any desire to cause an environmental problem. As the HWTR program has successfully shown, creative and energetic technical assistance, doggedly implemented, will do more to achieve widespread compliance than will any "big stick." We hope that Ecology will re-examine whether it is putting sufficient emphasis on technical assistance. Loading on more and more complex technical requirements, as in this Draft Permit, will only lead to a continuing spiral of non-compliance.

SPECIFIC COMMENTS

Our specific comments are organized in logical order, not necessarily in the order in which they appear in the permit.

(1) S1 and S6: Permit Coverage and "No Exposure" Certificate

We think it is sound and practical policy to extend the "no exposure" exemption option to any facility that has no exposure. However, the difficulty lies in figuring out how to meet the required conditions. For example, how can a facility know whether there exists a "*reasonable* potential to cause or contribute to a violation of water quality standards," as required under S6(C)(3)? Similarly, how does one determine whether the water running

off the roof is subject to "*significant* levels of pollutants" in S6(C)(4)? Aren't these two requirements essentially the same thing for a roofed facility? These conditions clearly call for some judgment by the permittee, but the Permit is silent on how to exercise that judgment. Presumably, a "no" answer to all the questions on the Exposure Checklist (Appendix G) is sufficient to demonstrate compliance with S6(C)(3) and (4), but it would be nice if the Draft Permit said so. Similarly, the Fact sheet at page 34 alludes to the fact that there are certain roof compositions that are assumed to pose a problem, and it would be nice if the Exposure Checklist simply listed these.

Another suggestion is to allow the "no exposure" exemption to apply to outfalls, not just to entire facilities. The Draft Permit's approach unreasonably discriminates against owners of facilities with large land areas. We fail to see the logic of why a no-exposure discharge shouldn't be granted no-exposure coverage – after all, isn't the point to exclude those sources that don't contribute to pollution problems, regardless of how the property happens to be configured?

(2) S7: Compliance with Standards

We are greatly alarmed by the bold language in S7, for a number of reasons. First and foremost, this language does not reflect the agency's own thinking on what compliance with standards means, as explained in the Fact sheet at page 35. S7's language seems to set up a blank check for third party suit, and completely undercuts Ecology's own use of the benchmarks approach. Can it really be Ecology's intent to have permittees spending time and money on lawsuits, rather than improving stormwater management? We urge the agency to incorporate much of the language from page 35 of the Fact sheet into the Permit itself. This would more clearly establish what are the agency's compliance expectations.

Not only is S7's "strict compliance" language at odds with Ecology's own policies, but it also ignores the serious technical difficulties that exist for any permittee in trying to figure out whether one's stormwater is in compliance or not. What compliance means in terms of sediment standards is a complete mystery, because neither Ecology nor EPA nor anybody else has ever been able to make the requisite connection between pollutant concentrations in stormwater discharges and exceedences of the sediment standards. The use of such "strict compliance" language for human health-based criteria completely likewise doesn't make sense for stormwater, and Ecology itself has acknowledged this in the Fact sheet (page 21). While there is at least some logic in requiring strict compliance with surface water standards, such a requirement is premature when, as now, the agency is in the process of rewriting and revising these same surface water quality standards.

(3) S3(D) and S4(D): Discharge Limits and Monitoring for Discharges to Impaired Bodies

These provisions of the Draft Permit put permittees who discharge into 303(d) listed water bodies, particularly those bodies impaired with multiple parameters, into an impossible and unfair position. First, most permittees have not monitored their stormwater for even conventional pollutants, never mind for the multiple polysyllabic chemicals that constitute the listed parameters for such locations as Elliott Bay and the Duwamish. This makes the Draft Permit's expectation of sudden compliance completely unrealistic. Yet the permittee is expected to know, under S1(C)(7), whether or not they can meet all of S3(D)'s requirements or are excluded from coverage.

Second, these discharge limits are unfair because they set up a "guilty until proven innocent" enforcement mechanism. At the outset, the permit fails to provide the permittee with reasonable notice of what is expected in order to achieve permit compliance for sediment, human health and narrative standards. Ecology's promise to put this critical information in a cover sheet issued at time of coverage is insufficient to provide notice to permittees now. The permit at S4(D) gives no reasonably certain measure of what should be monitored or how. Yet it assumes guilt and sets up an automatic "effluent limit" in the form of the compliance schedule, without any opportunity for the permittee to challenge the underlying assumptions of non-compliance, and without being given an opportunity to appeal the decision.

What makes the S3(D) requirement even more unfair is that, unlike dischargers of conventional pollutants, dischargers to impaired bodies with sediment-derived parameters will most likely never be able to come into compliance. That is because many of the sediment-derived parameters are ubiquitous chemical byproducts derived from the

burning of fossil fuels and other atmospheric deposition. These particulates, which are true nonpoint pollutants, settle on impervious surfaces and are washed off into the stormwater, where they become some poor permittee's point source. Other sediment-derived parameters were deposited in the sediments through historic practices that no longer are conducted. In either case, these pollutants are unassociated with the current permittee's industrial operations. Because the permittee has no control over the source, it is unlikely they will ever be able to produce the requisite eight no-detect samples that would enable them to prove out. Thus, they will be driven relentlessly into the compliance schedule (see comments on compliance schedule below).

Another concern is the way this Draft Permit undercuts the TMDL process. If, as discussed above, the Draft Permit presumptively concludes that the discharger is guilty, and imposes an effluent limitation, then what is the incentive for or the purpose of the

TMDL? This Draft Permit appears to eviscerate that entire process. We believe that a better approach would be one that energizes and supports the TMDL process, rather than undercutting it. One idea would be that the sole actions required of dischargers under a compliance schedule would consist of (1) monitoring and data collection to determine whether it is a source of the parameter at issue, and (2) funding and support for Ecology to conduct a TMDL. This approach is preferable to the one that Ecology has conceived of in this permit, because it not only is more consistent with CWA mandates, but it also will result in a fair allocation of the pollutant burden.

Finally, from an implementation perspective, we are concerned about whether the requisite accredited and qualified lab personnel and facilities exist for the quantity and quality of sampling and monitoring that this Draft Permit envisions. There are literally hundreds if not thousands of industrial permittees in the state that discharge to urbanized embayments, who will be needing huge number of samples analyzed for multiple complex chemical parameters in a very short period of time. We think that permit delay is appropriate if for no other reason than to assess whether the infrastructure is capable of handling the monitoring requirements without significant error.

(4) S3(D): Compliance Schedule

On the one hand, we commend Ecology for providing a compliance schedule, because it demonstrates that the agency understands the terrible "guilty until proven innocent" position that the Draft Permit puts permittees in. The compliance schedule appears to be Ecology's attempt to provide a reasonable means to deal with this box. On the other hand, here the cure (the compliance schedule) appears almost worse than the disease (permit noncompliance). The compliance schedule marches the permittee through a series of increasingly expensive actions, without ever providing an opportunity for the permittee to either demonstrate that the previous action was sufficiently effective to achieve compliance, or even whether the next step would be appropriate for the problem at hand.

We suggest, at a minimum, that the compliance schedule provide at least two years in between each "bump up" so that permittees will have the requisite eight quarters of sampling to demonstrate whether the previous action worked or not.

Another concern relates to the assumption that each action will be efficacious in dealing with the underlying source of pollution. As discussed above, for most of the sediment-derived parameters this is patently untrue. Structural and nonstructural source control will not affect many, if not most, of these parameters. To our knowledge, there are no BMPs available that will achieve zero discharge for the highly complex pollutants that are located in these urban embayment sediments. Even when the pollutants are still being

discharged, treatment options that are typically used for stormwater were simply never designed to handle these kinds of chemicals. Thus, we have the situation where huge amounts of money may be spent implementing technical solutions that will achieve nothing.

Finally, even if Ecology changes nothing else about their compliance schedule approach, its implementation should be delayed until the agency has finished revising its 303(d) list. Because Ecology is proposing a fairly radical change in the methodology it uses to list impaired water bodies, it seems likely that there may be numerous changes in what bodies are listed and for what. We certainly don't want to be in a situation where we are several years into a compliance schedule, having expended significant amounts of money, only to determine that it was all unnecessary.

(5) S4(A): Benchmark Concept

As noted above, the Port generally supports the concept of monitoring for benchmarks. In fact, we can see no reason why Ecology shouldn't extend the concept to monitoring in impaired water bodies for existing dischargers. The benchmark parameters and values generally appear to be appropriate indirect measures of typical facility discharges and associated BMP performance, even if they do not directly relate to BMP performance. Nevertheless, we do have some concerns about how the benchmark concept is laid out in the Draft Permit.

Our primary concern has already been mentioned, which is that the language of S7 seems to completely obliterate the value of benchmarks. Apparently, once a permittee reports a value for a parameter that is above the water quality standard, then the fact that a different benchmark exists becomes moot. This is particularly true given that copper, lead and zinc benchmarks are at or above water quality standards. Couldn't a third party simply and easily bring suit to enforce on the basis of S7?

A closely related issue is the failure of the Draft Permit to make clear what happens when/if a permittee fails to attain a benchmark. Although the Fact sheet at page 25 states that benchmarks are not water quality criteria or effluent limits, the Draft Permit itself does not. By leaving this vague, the Permit seems to leave open the possibility that failure to attain a benchmark might be a basis for legal action.

Another concern is that the selection of hardness as a parameter that must be sampled if the value for total zinc exceeds the benchmark value for two quarters. We are at a loss to understand why it was included. The EPA's MSGP does not have a benchmark for hardness. Hardness is generally not a BMP performance measure, *i.e*. we are not seeking to remove hardness from stormwater. The primary, if not sole purpose of analyzing

hardness is to calculate water quality criteria for certain metals, particularly copper, lead and zinc. This would appear to further undercut the purpose of having benchmarks. Taking Ecology on their word that the heart of the permit is reliance on BMPs, then we believe benchmarks should focus only on parameters that are the current targets used for BMP performance evaluations, e.g. TSS, copper, lead and zinc. Hardness should be dropped.

Our final concern regarding the draft permit's implementation of the benchmark concept involves two issues regarding the use of turbidity as a benchmark measurement. First, Ecology has not provided a sound technical basis for establishing a benchmark value of 25 NTU. Given that a value this low will likely cause significant compliance risks for permittees, Ecology's decision should be based on something more than "field experience." Our second concern relates to the choice of turbidity as Ecology's sole benchmark for suspended material. Although turbidity measurement serves a useful purpose in certain instances (e.g. as a field screening tool, especially in combination with settleable solids), turbidity measurement alone is an imperfect measure of suspended material. Turbid water may or may not have a high degree of suspended solids, depending on the type of material causing the turbidity. Turbidity measurement therefore is a poor tool for determining whether the degree of suspended and settleable materials in a discharge poses an environmental threat. Turbidity is also a poor indicator of the performance of BMPs, since individual BMPs are generally designed to provide for settling of a limited range of larger particle sizes, irrespective of turbidity. If, for example, a discharge includes a significant component of clay-sized particles, BMPs at the facility might be operating very effectively at removing the larger particle sizes that pose the greatest sedimentation risk in receiving waters, but turbidity levels could be relatively unaffected. Because total suspended solids (TSS) is the key performance parameter for certain BMPs as outlined in the King County and Ecology stormwater manuals, TSS should be used as the benchmark instead of turbidity. To provide overall consistency with state and local guidance as well as EPA's MSGP, the draft permit should provide for a TSS benchmark at 100 mg/l in lieu of the proposed turbidity benchmark at 25 NTU.

(6) S4(A): Sampling Protocols

Our main concern related to sampling methodology is that for any continuous monitoring program to work for the wide range of businesses and industries under this Draft Permit, it must be reasonably simple and do-able. The sampling criteria in #1, 3 and 4 may be suitable for stormwater studies, where a trained professional is charged with meeting the protocols, but they simply are not do-able for most businesses. Simply put, these sampling criteria require that operators devote their attention to tracking sporadic and

interrupted rainfall conditions, and not to business. We simply cannot fathom how this is going to work successfully for many of our tenants.

Assuming that the permittee is able to meet the basic sampling protocols, we have some additional suggestions for how the monitoring program could be improved so that the results of the sampling are meaningful.

- There likely will be problems with using the months of July, August September as one quarter, given that these are the driest three months. Many permittees will need to file variances because of an inability to obtain samples. To prevent this problem, the agency should consider changing the quarters, so that June, July and August are "summer." This will lessen the administrative burden on Ecology.
- Instead of just grab samples, allow for the option of multiple grab samples that are manually composited into a single sample (this is a more effective measure of BMP performance)
- Where visual monitoring of outfalls is impossible because they are submerged during all or some tides, allow for the option of substituting a visual inspection of whether the BMPs are there and working
- The provisions for the storm event sampled should relate to 24-hours or no recordable rainfall, instead of using the term "no-discharge." This is important
- Given the inevitable base flows that will be present between storms. In some cases, there could always be a base flow discharge, invalidating the successive storm given the current language of "discharge."
- In S4(A)(1), the nonstormwater discharges should be expanded to include the standard list of acceptables, such as irrigation over spray/runoff, washing without soaps, etc.
- The analytical methods for "petroleum-oil and grease" are not appropriate. The methods listed are outdated and engender positive bias from non-petroleum products extracted by the solvents used in the analytical process. The Freon solvents used in these analytical methods are outlawed, with limited supply available in existing lab stocks (which should be declining), or on the black market. The correct method should be NWTPH-Dx, a gas-chromatographic method which yields both the oil and diesel-range fractions of petroleum products. An alternative method, though less suitable than NWTPH-Dx, is the HEM, EPA 1664 method.
- In S4(E), the phrase "…representative of the volume" has little or no meaning in the context of this Permit, that specifies grab samples taken in the first hour, irrespective of volumetric discharge rates.
- In S4(F), the accreditation requirement exemptions for flow, temperature, settleable solids, and conductivity are irrelevant because these are not required sampling parameters in this Permit. Also, the language is confusing and circular.

What it should say is that handheld units are acceptable as long as they are properly calibrated, with records on file.

(7) S4(B)(2): Monitoring for Air Transportation Industry Group

Although the Port's operations at Seattle-Tacoma International Airport are not covered under this Draft Permit, we would nevertheless like to comment on the selection of 30 mg/l as an appropriate benchmark for BOD5. We are unsure of how that number was derived. It appears to be an unreasonably low value, given that the same 30 mg/l level is required as an effluent limit for point discharges from wastewater treatment plants, at the edge of a mixing zone, in the water column, after secondary treatment. We fear that it is unreasonable to expect stormwater discharges from most airports to meet that same standard at the end of pipe, without treatment.

S9(5): Applicability of SWM Manual

We agree with the concept of requiring all permittees to apply the technical standards contained in the SWMM. However, there are two aspects of the language in the Draft Permit that need to be fixed. The first is in S9(5)(c), which states that "existing permitted facilities that comply with standards are not required to redo their SWPPP and BMPs…" What does "comply with standards" mean? Compliance with water quality standards? As discussed above, given the present state of affairs, it is virtually impossible for a permittee to determine whether or not this has been achieved. Including this phrase would seem to make the entire section inapplicable to anyone. If what is meant is to comply with engineering design standards for SWM, then this is reasonable, and should be clearly stated.

Another clarification that is in order is under S9(5)(c). That section should state that existing facilities undergoing redevelopment need apply the SWMM requirements only to those portions of the facility that are actually undergoing redevelopment. Otherwise, for large facilities this would completely undercut S9(5)(b).

Thank you for the opportunity to comment on the Revised Industrial Stormwater General Permit. We look forward to a much-improved Final Permit.